an anomalous right. If the child has a right of action it must arise at the time of the injury, but at that time it is uncertain whether the child will be born alive, so that a right of action is created which is contingent on a subsequent irrelevant fact. Strong reasons of public policy too are against allowing this new right of action, — infinitely difficult questions of fact would come before juries, and the courts would be filled with cases brought in bad faith.

THE PAROL EVIDENCE RULE APPLIED TO WILLS. — An interesting case regarding the interpretaiion of a will has recently been before the Supreme Court of Pennsylvania. *In re Root's Estate*, 40 Atl. Rep. 818. The will in question gave "unto my nephew, William Root, the sum of $1,000." The testator had a true nephew, William Root. His wife also had a nephew of the same name. To explain this will, evidence was offered in the Orphan's Court of the surrounding circumstances and the declarations of the testator tending to show that the wife's nephew was intended to take the legacy. The Orphan's Court admitted the evidence, and decided in favor of the wife's nephew. The Supreme Court, however, reversed this decision on the ground that when one person exactly meets the description in the will it is error to admit evidence of any kind to show that another person not exactly meeting the description was intended.

Half a century ago this decision would have met with general approval; but since that time there has been a steady growth of opinion that the rule here laid down is too narrow, and that whatever may be the case as regards direct declarations of intention, at least the courts may look fully into all other extrinsic circumstances. An instance of this growth appears in *Abbot* v. *Middleton*, 7 H. L. C. 68, where Lord St. Leonards said regarding the construction of a will, "You are, by the settled rule of law, at liberty to place yourself in the same situation in which the testator himself stood." In a subsequent case, Lord Cairns expressed himself to the same effect. *Charter* v. *Charter*, L. R. 7 H. L. 364. *Grant* v. *Grant*, L. R. 5 C. P. 727, was a case exactly parallel to the Pennsylvania case. Evidence was there received to show that the wife's nephew was meant, and Lord Blackburn distinctly repudiated the doctrine now urged by the Pennsylvania Court. To turn to American authorities, the words of the will considered in *Patch* v. *White*, 117 U. S. 210, exactly described an existing lot of land; yet when it appeared that this lot was not owned by the testator, the court righted the mistake by the aid of parol evidence. In England, then, and in the Supreme Court of the United States the strict rule laid down by the principal case is no longer adhered to.

On principle, the Pennsylvania position is hard to support. The aim of the law of construction is to give effect as nearly as possible to the intention of the testator. This aim is measured on one side by a rule of evidence established by time, that the direct declarations of the testator must not be regarded in the search for his meaning. On the other side, it is limited by the Statute of Frauds, which requires that this meaning when found be expressed in writing. Within these bounds no rule is established by precedent which places further restraints upon the interpreter; and in reason there seems to be no need for such a rule. Written words are but the symbols of the writer's meaning, and at best imperfect symbols. The law requires not a perfect but only a sufficient expression, and this there may be although the words are not used in their strict

grammatical sense. It seems arbitrary to a degree to refuse effect to the author's meaning when sufficiently expressed, simply because the language used might have been a better expression for another meaning if the author had entertained it.

ARREST OF MISDEMEANANTS. — The case of *Brown* v. *Weaver*, 23 So. Rep. 388 (Miss.), rules that when a deputy sheriff shoots a misdemeanant who is fleeing to escape after arrest he exceeds his authority, and that the sheriff and his bondsmen are liable for the act of the deputy. It is generally admitted to be law that if a misdemeanant flees before arrest an officer may not kill him, even if it is not possible to capture him in any other way; and the court in the principal case see no reason why the power of the officer should be greater after arrest. The life of a human being seems to the court a weightier matter in the scale of public policy than the failure of justice in regard to a petty offender. *Thomas* v. *Kinkead*, 18 S. W. Rep. 854 (Ark.); *Reneau* v. *State*, 31 Amer. Rep. 626 (Tenn.).

The opposite view seems to find its sole exponent in Mr. Bishop, Criminal Procedure, vol. i. § 161, and note. Mr. Bishop's general argument is that it is necessary that the servants of the law have absolute power to enforce its commands. In a polemic note he puts the hypothetical case of a pugilist successfully defying a court because its servants have not the power to kill as a last resort. He relies also on the admitted rule of law that if any man, misdemeanant or felon, resists a legal arrest and is killed in the struggle, the officer is not liable, civilly or criminally. The cases the author cites do not support his contention. Such arguments fail to convince the ordinary mind. Surely the majesty of the law is not greatly lessened when an officer refrains from shooting his prisoner, nor is it probable that there would be any marked change in the general conduct of misdemeanants if they learned that officers had no power to kill them. On the other hand, to put into the hands of an ordinary officer of uncertain discretion a power to kill fleeing and unresisting misdemeanants is to create a very grave and immediate danger.

It seems clear, then, not only that the result which the case reaches is sound, but also that the case is far from the line. The rigid rule that an officer may kill a fleeing felon, though not a misdemeanant, — adequate as it may have been in the old law, — is not satisfactory to-day. Modern ideas of public policy, vague and incapable of definition as they are in this regard, tend to limit the officer's power toward felons as well.

IS A VIEW BY THE JURY PART OF THE TRIAL? — A trial for murder is so laborious and protracted an affair that some courts are inclined to search far for reasons by which to avoid setting aside a trial once held for a mere technical error of procedure. The case of *People* v. *Thorn*, 50 N. E. Rep. 947 (N. Y.), is perhaps an example of this inclination. A murder had been committed under particularly atrocious circumstances. In the course of the trial, the jury were sent to take a view of the premises where the crime was committed. The prisoner at his own special request did not accompany them; but when the verdict of guilty was finally rendered, he raised the objection that he had not been present through the whole trial, and was therefore entitled to be tried again. The